

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 510 of 1987

in

SPECIAL CIVIL APPLICATION No 5027 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

BOARD OF MANAGEMENT

Versus

DILIP D VAIYA

Appearance:

MR DC RAVAL for M/S ANAND ADVOCATES for Appellants

MR BP TANNA for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE A.M.KAPADIA

Date of decision: 01/03/2000

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated November 11, 1987 rendered by the learned Single Judge, in Special Civil Application No. 5027/87 by which order dated September 24, 1987 suspending the respondent no.1 from service as well as subsequent approval dated September 29, 1987 granted to the said order by the Board of Management, Sheth V.S.General Hospital, Ahmedabad, are quashed.

2. The respondent no.1 was appointed as an Honorary Orthopaedic Surgeon in Sheth V.S.General Hospital, Ellisbridge, Ahmedabad. After some time, he was appointed as an Associate Honorary Orthopaedic Surgeon in the said Hospital. Since August, 1983, the respondent no.1 was attached to the said Hospital as an Honorary Orthopaedic Surgeon and also as Honorary Professor. He was required to impart education to under-graduate and post-graduate students at (1) Smt. N.H.L. Municipal Medical College, (2) K.M.School of Post-graduate Medicine, and (3) Research Centre, which are being managed by the Board of Management of Sheth V.S.General Hospital. On September 22, 1987, Dr. Surendra Patel, Shri Anilbhai Chinai and Dr. Ashok Vora, who were members of the Board of Management took a round of Wards No. 5 & 9 of V.S.General Hospital to which the respondent no.1 was attached in his capacity as Honorary Professor. During their visit, it was found by them that medicines of Om Pharmaceuticals alone were prescribed at the instance of the respondent no.1, who had got financial interest in that Pharmaceutical Company, in Unit No.III of which he was head. On inquiry being made from the resident doctors, it was learnt that when they were working in other hospitals, they were not prescribing medicines of Om Pharmaceutical Company, but had started prescribing medicines manufactured by the said Pharmaceutical Company only after being allotted to Unit No.III of which the respondent no.1 was head. Under the circumstances, members of the Board of Management inferred that the respondent no.1 had misused his position and given direction to the resident staff to prescribe medicines of only Om Pharmaceutical Company, which was a serious matter. Accordingly, a letter dated September 24, 1987 was written by them to the Mayor, Ahmedabad Municipal Corporation, who also happens to be

the Chairman of the Board of Management of Sheth V.S.General Hospital, Ahmedabad for taking necessary action. The Mayor in his capacity as Chairman of the Board of Management addressed a letter to the Superintendent, V.S.General Hospital bringing the lapses on the part of the respondent no.1 to the notice of the Superintendent and directed the Superintendent that in anticipation of approval of the Board of Management, departmental inquiry be initiated and pending inquiry, the respondent no.1 be immediately suspended. On receipt of letter, the Superintendent, V.S.General Hospital passed an order dated September 24, 1987 placing the respondent no.1 under suspension. Subsequently, order of suspension was approved by the Board of Management on September 29, 1987. Feeling aggrieved by the order of suspension, the respondent no.1 instituted Special Civil Application No. 5027/87 and prayed the Court to quash it by issuance of appropriate writ, order or direction under Article 226 of the Constitution.

3. The learned Single Judge took into consideration Regulation 20(a) which was as under :-

"An officer or servant may be suspended from service pending inquiry against him."

It was found by the learned Single Judge that no inquiry was pending against the respondent no.1 when order of suspension was passed against him on September 24, 1987. On interpretation of the above-referred to regulation, the learned Single Judge held that inquiry in contemplation was not covered by the said regulation and, therefore, the respondent no.1 could not have been suspended from service pending contemplated inquiry. In view of these conclusions, the learned Single Judge allowed the petition by judgment dated November 11, 1987, which has given rise to the present appeal.

4. Mr. D.C.Raval, learned Counsel for the appellants has produced Circular No.1, dated September 25, 1990 issued by the Municipal Commissioner of Ahmedabad Municipal Corporation, for perusal of the Court. It is ordered to be taken on record of the case. By the above-referred to Circular, Regulation 20(a) is amended. The amended Regulation 20(a) reads as under :-

"Municipal Officer or municipal servant may be placed under suspension where a disciplinary proceeding against him is contemplated or is pending"

It was not provided in unamended Regulation 20(a) that a municipal officer or municipal servant was liable to be placed under suspension where a disciplinary proceeding against him was contemplated. Having regard to the facts of the case, it cannot be said that the view taken by the learned Single Judge is erroneous so as to warrant interference of this Court in the present appeal.

5. The learned Counsel for the appellants has produced photostat copy of letter dated May 30, 1992 addressed by the respondent no.1 to the Superintendent, V.S.General Hospital, Ahmedabad, wherein it was mentioned by the respondent no.1 that he was not inclined to continue as Honorary Orthopaedic Surgeon or Honorary Professor with effect from July 1, 1992. The learned Counsel for the appellants has also produced letter dated June 8, 1992 addressed by the Superintendent, Sheth V.S.General Hospital to Chairman of the Board of Management of Sheth V.S.General Hospital stating that as term of the respondent no.1 as Honorary Professor of Orthopaedic Surgery was to expire on July 1, 1992, Dr. R.N.Nayak, who was senior most Associate Professor of Orthopaedic Surgery, be appointed as Honorary Professor of Orthopaedic Surgery. These two letters are also ordered to be taken on record of the case. Though the above-referred to letters would indicate that the respondent no.1 had tendered resignation long back, it cannot be said that the view taken by the learned Single Judge on the regulation as it stood prior to its amendment, is erroneous. In view of the amended regulation, now a municipal officer or servant can be placed under suspension even when a departmental proceeding against him is contemplated. The amendment made in the relevant regulation itself indicates that under the unamended Regulation 20(a), a municipal officer or municipal servant could not have been placed under suspension where a departmental proceeding against him was contemplated. Therefore, there being no substance in the appeal, the same deserves to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed, with no order as to costs.

1.3.2000 (J.M.Panchal,J.) (A.M.Kapadia,J.)

(patel)

